IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 16 OF 2006
IN
WRIT PETITION NO. 6902 OF 2000

Mr.Damu Hari Paigude. ... Applicant.

V/s.

Pune District Central Co-op. Bank Ltd. ... Respondent.

N.A.Kulkarni for the petitioner.

K.S.Bapat for the respondents.

CORAM: V.C.DAGA, J.

DATED: 19th April 2006.

P.C.:

. Heard learned counsel for the rival parties. Perused application.

2. The applicant/ original respondent No.1 is seeking refund of the following dues contending that he is entitled for the same during the pendency of the petition:

Gratuity :	Rs.4,14,000/-
Security Deposit :	Rs. 80,000/-
Sevak Apatti Niwaran Nidhi :	Rs. 20,000/-
Leave Wages :	Rs.1,17,000/-

3. The above application is opposed by Mr.Bapat, learned counsel appearing for the Bank (original petitioner) contending that the prayer for interim relief is travelling beyond the scope of the petition.

4. Mr.Bapat submits that so far as gratuity amount is concerned, the Bank is entitled to forfeit the same, if the misconduct committed by the applicant/ original respondent No.1- workman is upheld. According to him, even otherwise, in view of section 4(3) of the Payment of Gratuity Act, the maximum limit for payment of gratuity is Rs.3,50,000/- as such, at any rate, applicant cannot get more than Rs.3,50,000/- in toto. So far as security deposit is concerned, Mr.Bapat submits that it is given for good performance and faithful discharge of duties. On the face of misconduct alleged, this amount of security deposit is not refundable to the applicant.

5. So far as Sevak Apatti Niwaran Nidhi is concerned, Mr.Bapat submits that same logic pressed into with respect to security deposit would be applicable to it.

6. So far as leave wages are concerned,

Mr.Bapat, however, submits that the applicant may be entitled to leave wages at least till the date of his dismissal. He, thus, submits that application in question is liable to be rejected.

7. Having heard the parties at length, the substantive petition is directed against the order of the Industrial Court dated 28th August, 2000 confirming the order dated 10th May, 2000 passed by the Labour Court, whereby dismissal order of the applicant dated 9th April, 1986 came to be set aside with direction to the Bank to reinstate the applicant- workman with continuity of service and pay full back wages for the period 11th April, 1986 to 16th July, 1988.

8. This petition has been filed in the year 2000. Rule has been issued on 11th December, 2000. So far as back wages are concerned, the Bank has invested the said amount of back wages in fixed deposit and F.D.Receipt has been placed in the custody of the Registry of this Court.

9. Since the petition is of 2000, final hearing thereof is likely to take considerable

time. Till that time, it would not be proper to keep the applicant- workman away from the amount to which he is legitimately entitled.

10. The interim directions sought to be claimed are in the aid of final reliefs. It is needless to mention that even if the petitioner-Bank succeeds in the petition, the applicant-workman (original respondent No.1) would be entitled to the amounts he claimed, except that of the gratuity; unless the Bank decides to forfeit the same. As on today, power to forfeit has not been exercised by the Bank.

11. So far as other amounts are concerned, the applicant- workman would be entitled to claim the same during the pendency of the petition, Hence following order:

> (A) The petitioner- Bank is directed to deposit the amount of Gratuity in the sum of Rs.3,50,000/- with this Court within eight weeks from today. In the event of such deposit, the Registry is directed to invest the same with any

nationalised bank, initially, for a period of 37 months and keep the said investment renewed from time to time. Needless to mention that this deposit shall be subject to the result of the petition.

(B) So far as Security Deposit in the sum of Rs.80,000/- and Sevak Apatti Niwaran Nidhi in the sum of Rs.20,000/- are concerned, the same have not been forfeited by the Bank. In the departmental enquiry, no recovery has been ordered against the petitioner. That order now cannot be modified. In this view of the matter, applicant would be entitled to refund/ withdrawal of the amounts of Security Deposit and Sevak Apatti Niwaran Nidhi in the sum of Rs.80,000/- and Rs.20,000/- respectively, subject to the undertaking that in the event this Court directs refund of this amount, the applicant- workman shall bring back this amount. The petitioner- Bank is, thus, directed to pay the aforesaid amount to the applicant by drawing pay

order in favour of the applicant, within four weeks from today through the Registry, subject to the undertaking indicated herein.

(C) So far as claim of leave wages are concerned, since the learned counsel for the Bank could not establish his objection, applicant shall be entitled to the claim raised on account of leave wages at least till the date of dismissal i.e. 9th April, 1986.

. The Bank is directed to calculate the amount of leave wages within four weeks from today. Amount to be paid to the applicant within one week by "account payee pay order" issued in favour of the applicant. The applicant shall be entitled to receive this amount without prejudice to his right so far as quantum is concerned.

. Failure on the part of the petitioner- Bank to pay the above amounts on or before 20th September, 2006, the aforesaid amount shall shall carry

interest @ 10% per annum from 20th September, 2006 till full and final resolution.

(D) It is needless to mention that it would be obligatory on the part of the petitioner- Bank to place zerox copies of the pay orders on record along with purshis showing payment of the aforesaid amount to the applicant- workman.

6. The civil application stands disposed of in terms of the this order with no order as to costs.

4. All concerned to act on authenticated copy of this order.

(V.C.DAGA, J.)